

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DORAN MAIN, LLC,

Plaintiff,

v.

ORDER

Civil File No. 13-211 (MJD/FLN)

NORTH CENTRAL STATES REGIONAL
COUNCIL OF CARPENTERS and
CARPENTRY CONTRACTORS
ASSOCIATION,

Defendants.

Anthony De Sam Lazaro, David J. Goldstein, and Marko J. Mrkonich, Littler Mendelson, P.C., Counsel for Plaintiff.

Brendan D. Cummins and Justin D. Cummins, Cummins & Cummins, PLLP, Counsel for Defendant North Central States Regional Council of Carpenters.

David L. Hashmall and Michael G. McNally, Felhaber Larson Fenlon & Vogt, PA, Counsel for Defendant Carpentry Contractors Association.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Franklin L. Noel dated June 27, 2013. Plaintiff filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Noel dated June 27, 2013, with the modification that dismissal of Counts 1 and 2 of the Complaint are dismissed without prejudice. See, e.g., County of Mille Lacs v. Benjamin, 361 F.3d 460, 464 (8th Cir. 2004) (“A district court is generally barred from dismissing a case with prejudice if it concludes subject matter jurisdiction is absent.”). This dismissal does not adjudicate the merits of the claims asserted in Counts 1 and 2, but it does adjudicate the Court’s jurisdiction. See Sandy Lake Band of Miss. Chippewa v. United States, 714 F.3d 1098, 1103-04 (8th Cir. 2013).

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Franklin L. Noel dated June 27, 2013 [Docket No. 51], with the modification that dismissal of Counts 1 and 2 is without prejudice based on lack of subject matter jurisdiction.
2. Defendant Carpentry Contractors Association’s Motion to Dismiss [Docket No. 13] is **GRANTED**.

3. Defendant North Central States Regional Council of Carpenters' Motion to Dismiss the Complaint [Docket No. 18] is **GRANTED IN PART** and **DENIED IN PART**.
4. Counts 1 and 2 are **DISMISSED WITHOUT PREJUDICE FOR LACK OF SUBJECT MATTER JURISDICTION**.
5. Defendant Carpentry Contractors Association is dismissed as a party to this action.

Dated: August 26, 2013

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court